

FILED

JUL 9 1989

2098 PHM P. SPANOL, JR.  
CLERK

NO. 89-1573

IN THE SUPREME COURT OF THE  
UNITED STATES

OCTOBER TERM, 1989

STATE OF ALABAMA,

PETITIONER,

v.

WALTER RAYBON McDANIEL,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT AND  
COURT OF CRIMINAL APPEALS OF ALABAMAPETITIONER'S REPLY TO THE  
BRIEF IN OPPOSITION TO THE PETITION

OF

DON SIEGELMAN  
ATTORNEY GENERAL

AND

JOSEPH G. L. MARSTON, III  
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR PETITIONER

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REPLY TO THE RESPONDENT'S  
STATEMENT OF THE FACTS

The Petition is based on the undisputed facts shown by the record and found by the Court of Criminal Appeals of Alabama. The Respondent takes issue with the findings of the Court of Appeals on numerous points, but none of these is of any substantive significance in relation to the matters raised by the petition. For this reason, we will not burden the Court with a discussion of them.

However, on one point we must take issue with the Respondent. The Respondent writes:

"...Deputy Watson testified he thought Mrs. Graves was crazy and that she was hysterical.  
(Sup.R-22, 23; R-23)...."  
(Opposition Brief, page 9)

Watson testified that this was his initial impression of Mrs. Graves, because she was upset. Watson testified:

"Q. And, did you deem her, in your mind, that she was crazy? Is that correct?

"A. When I first heard her start, when she started jabbering on, I thought who is this crazy woman calling me. That was my first thought." (R.p. 23; emphasis supplied)

And:

"Q. Do you remember testifying at the preliminary hearing where we said, did you have the lady call and at first you thought she was crazy?

"A. Absolutely. [Witness laughing.] I'm still not so sure she's not." (Supp.R.p. 22; emphasis supplied.)

And:

"A. No, sir. I remember that what I said was -- I said she called and when she first called, the way she was raving, I thought she was crazy.

"Q. Okay.

"A. And then when she started giving me the same information that I already had and she told me where he was going, then I acted. Because she told me where the fellow had just left there and was in route to Smith's Used Cars." (Supp.R. p.23; emphasis supplied.)

## REPLY ARGUMENT

### I.

#### CUSTODIAL ARREST

The Respondent argues that the search of the Respondent was illegal, since the Deputy intended to make an investigative stop and did not make an arrest until after the search. But, Watson never testified that such was his intention, and a police officer's intentions are not controlling on the question of custodial arrest. And, there is, of course, no ritual of arrest.

The Alabama Court of Criminal Appeals found that Watson had probable cause, therefore, a custodial arrest was authorized. It is undisputed that Watson stopped the Respondent, made him alight from his truck, told him he was suspected<sup>1</sup> of carrying

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1. In Glass v. State (424 So.2d 687, 688-689 [Ala. Crim. App, 1982]), the Court of Criminal Appeals ruled that a person who was stopped, ordered out of a vehicle, and told he was suspected of a felony, was under custodial arrest.

marijuana, and searched him<sup>2</sup>. Any reasonable person so treated would understand that he would not be allowed to go shortly. A person so treated would, therefore, be under custodial arrest, even if the officer did not so intend. *Berkemer v. McCarty*, 468 U.S. 420, 437 ff, 82 L.Ed.2d 317, 333 ff, 104 S.Ct. 3138 (1984). Watson took the Respondent into custody, and this was lawful, since it was based on probable cause.

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2. The Respondent claims that Watson "patted the Respondent down", but the whole rationale of the Court of Appeals' opinion and decision is that Watson went further than a "pat down".

## III.

### FACTUAL DISPUTES AND SUPERVISION

The Respondent claims that there are factual disputes in this case, but none of those to which he points, including Mrs. Graves' sanity, are of any significance. The only serious factual issue, from the beginning, was probable cause, and the State Courts found that against the Respondent. Interestingly, this is one issue which the Respondent does not raise here.

In this case the Alabama Appellate Courts trampled on at least a century of constitutional precedents, suppressed the evidence, and ordered a drug offender re-tried, this being tantamount to acquitting him. It is most difficult to see how the Respondent can claim that this case is of so little public concern that this Honorable Court should leave it undisturbed.

## CONCLUSION

In conclusion, your Petitioner, the State of Alabama, again respectfully submits that in this case the Court of Criminal Appeals and Supreme Court of Alabama, decided questions under the Fourth Amendment in a manner which is in patent and flagrant conflict with the teachings of this Honorable Court.

Therefore, your Petitioner prays that this Honorable Court will issue the writ of certiorari and will review the matters complained of and reverse the decisions and opinion of the said Appellate Courts of Alabama.

Respectfully submitted,

DON SIEGELMAN  
ATTORNEY GENERAL  
BY:

JOSEPH G. L. MARSTON, III  
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR THE PETITIONER

CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III, Assistant Attorney General of Alabama, a member of the Bar of the Supreme Court of the United States and one of the Attorneys for the State of Alabama, Petitioner, hereby certify that on this \_\_\_\_\_ day of July, 1990, I did serve the requisite number of copies of the forgoing on the Attorney\* and former Attorney\*\* for Walter Raybon McDaniel, Respondent, by mailing the same to said Attorneys, first class postage prepaid and addressed as follows:

Hon. Jeffery C. Duffey\*  
Attorney at Law  
600 McDonough Street  
Montgomery, AL 36104

Hon. John T. Kirk\*\*  
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